



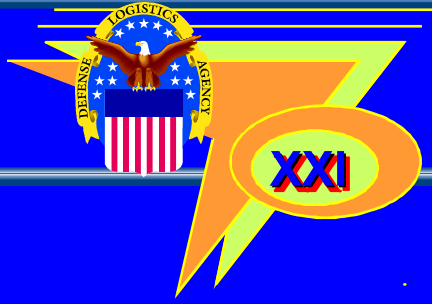
# GFR LEGAL ISSUES

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**DEPUTY DISTRICT COUNSEL**  
**(CONTRACTS)**



# Introduction

- **BRING YOU UP TO DATE ON ISSUES THAT HAVE HIT MY DESK W/I LAST YEAR**
- **TAKE A LOOK AT A FEW RECENT CASES**
- **STRESS CONSISTENT APPLICATION OF REGULATIONS**



# Topics of Discussion

- **1. IMPORTANCE OF REGULATORY DEFINITIONS**
- **2. WHAT DEVIATIONS FROM THESE DEFINITIONS ARE ALLOWABLE?**
- **3. PRACTICAL SUGGESTIONS**
  - **How to determine “aircraft” “in the open”**
- **4. PERSONAL LIABILITY ISSUE**



# FIRST ISSUE

- **WHAT KIND OF CONTRACT IS INVOLVED?**
  - **GFR Clause usually applies to “Negotiated Fixed Price contracts for aircraft production, modification, maintenance, repair, or overhaul.”**
  - **Aircraft Flight Risk clause usually applies to “cost reimbursement contracts”.**
  - **See DFARS 228.370**



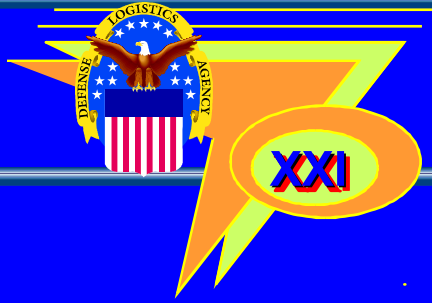
# REGULATORY DEFINITIONS

- **“AIRCRAFT” - DFARS 252.228-7001(a)(1) & 228.370(b)(2)(i)**
  - ENGINE/WING OR EQUIVELANT
  - FURNISHED BY GOV'T
- **“IN THE OPEN” - DFARS 252. 228-7001(a)(5) & 228.370(b)(2)(ii)**
  - outside Contractor facility
  - always when Gov't furnished aircraft



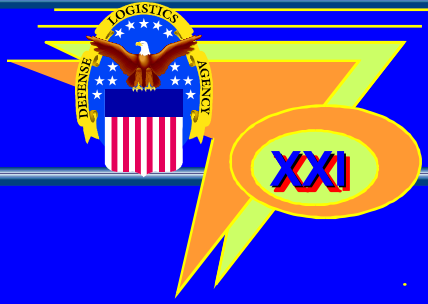
# Practical Application

- **For aircraft look for:**
  - **1. A wing and an engine while in initial production**
  - **2. An initial DD250 and tail number for retrofit/overhaul aircraft (i.e. a GFA))**
- **For “in the open” look for:**
  - **1. Places outside or listed on schedule while in initial production**
  - **Gov’t Furnished Aircraft (GFA) while in Contractor Care, Custody, and Control**



# DEVIATIONS

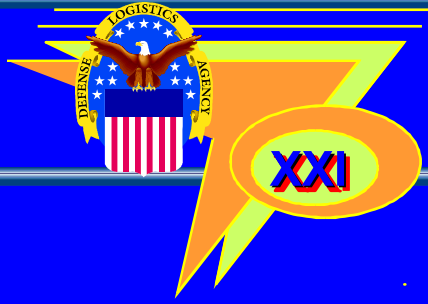
- **DFARS 228.370 - GFR Clause mandatory - unless:**
  - **FMS sales**
  - **cost of insurance less than \$500 and KO agrees to recognize insurance costs**
- **DFARS 228.370(b) (2) Allows for broadening of definitions (not narrowing) i.e. wing/engine = rotor-blade/engine**
- **remember: look at the contract for the clause; also look at the contract type to analyze whether the clause is mandatory (commercial item contracts?)**



# Real Life Issues

- **PCOs removing GFR Clause w/o a FAR/DFAR deviation (requires business case)**
  - **what effect does this have on reporting safety?**
- **Gov't mistakenly handling GFR issues under the property clause?**
  - **Do we lose visibility on important aircraft history?**





# More Real Issues

- **Look for issues of willful misconduct or lack of good faith by Contractor management**
  - **are sound industrial practices required or are corners being cut?**
- **Look for poor workmanship issues**
  - **is aircraft in “open” under unreasonable conditions?**
  - **normally uninsurable risk (i.e. employee criminal misconduct)**



# What This Means

- **Uniform application of GFR Clause throughout DCMC is critical**
- **Work these issues with your local counsel or GFR legal experts**
  - **East - Leigh Owens (697-6264)**
  - **West - Dave Riley (929-6202)**



# Next Steps

- **Make sure you open a dialogue between the GFR world and the Government Property Administrators**
- **Seek common understanding of where the GFR clause applies and where the Gov't Property Clause applies**



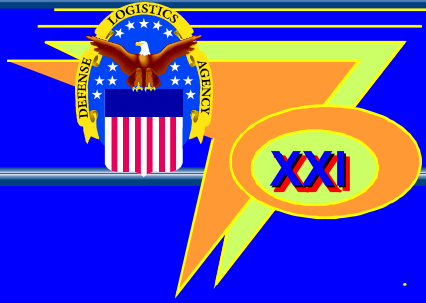
# Recent GFR Cases

- **Vought Aircraft Company - ASBCA No. 47357 - 12/27/99**
- **Appeal of LTV Aerospace - ASBCA No. 37571, 38039, 45808 - 7/26/93**
- **Damage to temporarily installed contractor equipment does not fall w/i GFR clause**
- **Cases apply to GFA issues only**



# Personal Liability Issues

- **What do you do when you are sued in your personal capacity?**  
(arising from Government Activities)
- **Call your local counsel ASAP**
- **Inform your Command**
- **Begin a draft statement as to how you were operating w/i the scope of your employment -don't finalize until reviewed by counsel and Command**



# More - Personal Liability

- **What happens next?**
  - **Your “Scoping” Narrative and Command endorsement affidavit goes through counsel to US Attorney**
  - **If US ATTY agrees you were w/i scope - US will defend you (usually a quick process)**
  - **If sued in state court - removal motion to federal court**
  - **Substitution Motion - US inserts itself as defendant in place of you**



# WRAP-UP

- **QUESTIONS?**
- **COMMENTS?**
- **CONCERNS?**
- **WAR STORIES...**